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MCGARRY BAIR PC  
32 Market Ave. SW  
SUITE 500  
GRAND RAPIDS MI 49503

MAILED

APR 14 2010

OFFICE OF PETITIONS

In re Application of :  
Creswell et al. : DECISION ON APPLICATION  
Application No. 10/595,281 : FOR  
Filed: November 22, 2006 : PATENT TERM ADJUSTMENT  
Atty Docket No. 70038-0068 :

RECEIVED:  
McGarry Bair PC  
Intellectual Property Consultants  
By bmv at 11:39 am,  
4/16/10

DOCKETED:  
McGarry Bair PC  
Intellectual Property Consultants  
By bmv at 11:36 am,  
4/16/10

This is a decision on the "Request for Reconsideration of Patent Term Adjustment Under 35 U.S.C. § 154 and 37 C.F.R. § 1.705(b)," filed March 24, 2009. Applicants request that the initial determination be corrected from a patent term extension of zero (0) days to a patent term adjustment of one hundred forty-seven (147) days.

The application for patent term adjustment is GRANTED.

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment (PTA) determination at the time of the mailing of the Notice of Allowance is **one hundred forty-seven (147) days**. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On March 18, 2009, the Office mailed the Determination of Patent Term Extension under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term extension (PTE) to date is 0 days. On March 24, 2009, applicants timely submitted an application for patent term adjustment (with required fee)<sup>1</sup>. Applicants maintain that the initial determination of patent term adjustment is 147 days including

<sup>1</sup> PALM records indicate that the Issue Fee payment was filed on June 11, 2009.

177 days for Office failure to mail a first action under 35 U.S.C. 132 and 30 days for applicant delay in filing a response.

The record supports a conclusion that the patent issuing from the application is not subject to a terminal disclaimer.

Applicants are correct. As this international application was filed after May 29, 2000, the provisions of 35 U.S.C. 154(b) related to adjustment of patent term due to administrative delays apply. Accordingly, pursuant to § 1.703(a)(1), a period of adjustment of 177 days should have been entered for Office delay in mailing the first Office action (counting the number of days in the period beginning on, January 23, 2008, the day after the date that is fourteen months after the date on which the application fulfilled the requirements of 35 U.S.C. 371, and ending on the date of mailing of an action under 35 U.S.C. 132, July 17, 2008).

Additionally, pursuant to § 1.704(b), a period of reduction of 30 days for applicant delay should have been entered. Applicants took in excess of three months to file a response to the non-final Office action mailed September 10, 2008. A response was not received until January 9, 2009, three months and 30 days later.

In view thereof, the determination of patent term adjustment at the time of the mailing of the Notice of Allowance is one hundred forty-seven (147) days.

The revised patent term adjustment calculated at the time of the issuance of the patent (and reflected on the issued patent) should properly include any adjustment to term under the provisions of patent term adjustment for examination delay. Any request for reconsideration of the patent term adjustment indicated on the patent is by way of a request for reconsideration of patent term adjustment pursuant to 37 CFR 1.705(d). Any such request must be filed within 2 months of issuance of the patent.

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

The application file is being forwarded to the Office of Patent Publication for issuance of the patent.

# PALM INTRANET

Day : Friday  
Date: 4/9/2010  
Time: 07:32:53

## PTE Calculations for Application: 10/595281

|                          |            |                         |     |
|--------------------------|------------|-------------------------|-----|
| Application Filing Date: | 11/22/2006 | PTO Delay (PTO):        | 0   |
| Issue Date of Patent:    |            | Three Years:            | 0   |
| Pre-Issue Petitions:     | 0          | Applicant Delay (APPL): | 0   |
| Post-Issue Petitions:    | 0          | Total PTE (days):       | 147 |
| PTO Delay Adjustment:    | 147        |                         |     |

## File Contents History

| Number | Date       | Contents Description                            | PTO | APPL | START |
|--------|------------|---|-----|------|-------|
| 47     | 04/09/2010 | ADJUSTMENT OF PTA CALCULATION BY PTO            |     | 30   |       |
| 46     | 04/09/2010 | ADJUSTMENT OF PTA CALCULATION BY PTO            | 177 |      |       |
| 33     | 03/18/2009 | MAIL NOTICE OF ALLOWANCE                        |     |      |       |
| 32     | 03/13/2009 | ISSUE REVISION COMPLETED                        |     |      |       |
| 31     | 03/13/2009 | DOCUMENT VERIFICATION                           |     |      |       |
| 30     | 03/15/2009 | NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED |     |      |       |
| 29     | 03/12/2009 | NOTICE OF ALLOWABILITY                          |     |      |       |
| 25     | 02/21/2009 | DATE FORWARDED TO EXAMINER                      |     |      |       |
| 24     | 01/09/2009 | RESPONSE AFTER NON-FINAL ACTION                 |     |      |       |
| 23     | 01/09/2009 | REQUEST FOR EXTENSION OF TIME - GRANTED         |     |      |       |
| 22     | 09/10/2008 | MAIL NON-FINAL REJECTION                        |     |      |       |
| 21     | 09/09/2008 | NON-FINAL REJECTION                             |     |      |       |
| 20     | 08/20/2008 | DATE FORWARDED TO EXAMINER                      |     |      |       |
| 19     | 08/18/2008 | RESPONSE TO ELECTION / RESTRICTION FILED        |     |      |       |
| 18     | 08/18/2008 | NEW OR ADDITIONAL DRAWING FILED                 |     |      |       |
| 17     | 07/17/2008 | MAIL RESTRICTION REQUIREMENT                    |     |      |       |
| 16     | 07/17/2008 | REQUIREMENT FOR RESTRICTION / ELECTION          |     |      |       |
| 14     | 12/22/2007 | CASE DOCKETED TO EXAMINER IN GAU                |     |      |       |
| 11     | 09/21/2007 | IFW TSS PROCESSING BY TECH CENTER COMPLETE      |     |      |       |
| 10     | 08/30/2007 | PG-PUB ISSUE NOTIFICATION                       |     |      |       |
| 8      | 06/03/2007 | APPLICATION DISPATCHED FROM OIPE                |     |      |       |
| 7      | 11/22/2006 | 371 COMPLETION DATE                             |     |      |       |
| 6      | 05/29/2007 | SENT TO CLASSIFICATION CONTRACTOR               |     |      |       |
| 5      | 05/29/2007 | NOTICE OF DO/EO ACCEPTANCE MAILED               |     |      |       |
|        |            |   |     |      |       |

|   |            |  |  |  |  |
|---|------------|--|--|--|--|
| 4 | 11/22/2006 | ADDITIONAL APPLICATION FILING FEES   |  |  |  |
| 3 | 11/22/2006 | A STATEMENT BY ONE OR MORE INVENTORS<br>SATISFYING THE REQUIREMENT UNDER 35 USC<br>115, OATH OF THE APPLIC |  |  |  |

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**EXPLANATION OF PTA CALCULATION**

**EXPLANATION OF PTE CALCULATION**

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